

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

Caption in compliance with D.N.J. LBR 9004-1(b)

Tina N. Moss, Bar No. 014441993

**PERKINS COIE LLP**

1155 Avenue of the Americas, 22nd Floor

New York, New York 10036-2711

Telephone: +1.212.262.6900

Facsimile: +1.212.977.1649

*Counsel for Workday, Inc.*

In re:

Bed Bath & Beyond Inc., et al.,

Debtors.<sup>1</sup>

Case No. 23-13359

Chapter 11

Judge: Hon. Vincent F. Papalia

**WORKDAY, INC.'S LIMITED RESPONSE AND RESERVATION OF RIGHTS  
RELATED TO THE NOTICE TO CONTRACT PARTIES TO POTENTIALLY  
ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
[DOCKET NO. 714]**

Workday, Inc. (“**Workday**”) submits this limited response and reservation of rights with respect to the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Doc 714] (“**Cure Notice**”).

While Workday does not oppose the proposed assumption and assignment of its contracts or the Debtors’ Proposed Cure Amount, as defined below, Workday is submitting this limited response to: (i) clarify the prepetition amounts due and owing under each of the various Workday

<sup>1</sup> The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

contracts, and (ii) clarify that the Proposed Cure Amount does not include amounts coming due postpetition.

### **Background**

1. On July 3, 2017, Debtor Bed Bath & Beyond Inc. (“**BBBY**”) executed a Master Subscription Agreement (as amended, “**MSA**”) with Workday related to the use of payroll, human resource, and other cloud-based enterprise management services provided by Workday. Since entering the MSA, BBBY has executed various order forms, including Order Form # 353444, Order Form #373638, Order Form # 376923, Order Form #302680, Order Form #302647, which, among other things, add new service applications, extend the terms of use of service applications, and establish a payment and invoicing schedule for the services to be performed pursuant to the MSA (collectively, “**Order Forms**”).<sup>2</sup>

2. On June 13, 2023, the Debtors filed the Cure Notice, which identifies (a) those unexpired leases and executory contracts that may be assumed and assigned to a successful bidder, as defined in this Court’s bid procedures order [Doc 92], and (b) the Debtors’ proposed cure amounts with respect to the unexpired leases and executory contracts.

3. As set forth immediately below, the Cure Notice identifies a \$104,190.00 cure amount for Workday under the MSA and certain order forms (“**Proposed Cure Amount**”).

2217	Bed Bath & Beyond Inc.	WORKDAY INC	Deployment Tenant Order Amendment	-
2218	Bed Bath & Beyond Inc.	WORKDAY INC	Workday Amendment 1 to Order Form #00128321.0 - Fully executed	-
2219	Bed Bath & Beyond Inc.	WORKDAY INC	Workday - Amendment 2 to Order Form - #00128321.0 - fully executed	-
2220	Bed Bath & Beyond Inc.	WORKDAY INC	WORKDAY - MSA-128269-Bed Bath & Beyond Inc (part 1) -FULLY EXECUTED	104,190.00
2221	Bed Bath & Beyond Inc.	WORKDAY INC	Workday - PSA-161844-Bed Bath Beyond Inc. (Final 20Apr2021) - with Exhibits - Partially Executed - 2021.Apr.20 - Fully executed	-
2222	Bed Bath & Beyond Inc.	WORKDAY INC	WORKDAY - Subscription-Bed Bath & Beyond Inc (part 2) - FULLY EXECUTED	-
2223	Bed Bath & Beyond Inc.	WORKDAY INC	WORKDAY - Training-Bed Bath & Beyond Inc (part 3) - FULLY EXECUTED	-

<sup>2</sup> The term “Order Forms” is defined in the MSA to mean “the separate ordering documents under which Customer subscribes to the Workday Service pursuant to this Agreement that have been fully executed by the parties,” and the MSA includes any fully executed order forms.

**Response**

4. The Debtors' Proposed Cure Amount—\$104,190.00—correctly reflects the total *prepetition* balance under the MSA and Order Forms, but the Cure Notice does not accurately identify the Order Forms and does not accurately allocate the outstanding prepetition balance among the MSA and Order Forms.

5. As of the date of this limited response, the appropriate cure amount for the MSA and Order Forms is \$104,190.00 (same as the Debtor's Proposed Cure Amount), but is allocated across the MSA and Order Forms in the following way:

<u>Invoice Date</u>	<u>Memo</u>	<u>Due Date</u>	<u>Total Amount Due</u>
5/9/2022	Order Form 353444 - Tenant - bbby6 - payment 1 of 1	6/8/2022	13,200.00
8/9/2022	Order Form 353444 - Tenant - bbby6	9/8/2022	13,200.00
10/5/2022	Order Form 373638 - Tenant - bbby6 - payment 1 of 1	11/4/2022	52,800.00
10/31/2022	Order Form 376923 - TC payment 1 of 1	11/30/2022	24,990.00
			<b>104,190.00</b>

6. Workday requests any order approving assumption and assignment of the MSA and Order Forms must correctly identify the MSA, the Order Forms, and respective cure amounts as set forth in the table above.

7. Also, all *prepetition and postpetition* invoices due under the MSA and Order Forms must be paid in conjunction with any assumption under Bankruptcy Code § 365(b)(1). BBY has continued to use services under the MSA and Order Forms *postpetition*. As of the date of this limited response, there are two outstanding *postpetition* invoices collectively totaling \$1,435,891.00 (this is in addition to the \$104,190.00 *prepetition* Cure Amount).<sup>3</sup> Because BBY continues using services under the MSA and Order Forms *postpetition*, the total cure amount may increase depending on actual usage and the actual date of assumption and cure.

8. To be clear, Workday reserves all rights with respect to *postpetition* invoices related to the MSA and Order Forms, including the right to require payment in full of all *postpetition* invoices in conjunction with any assumption of the MSA and Order Forms, and the right to require

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<sup>3</sup> Copies of the *postpetition* invoices are attached to this limited response as **Exhibit A**.

any assignee provide adequate assurance of future performance related to all outstanding postpetition invoices.

**Reservation of Rights**

9. As of the filing of this limited response, the Debtors have not designated the MSA or Order Forms for assumption or assignment. Workday reserves the right to object to any assumption or assignment of the MSA or Order Forms on adequate assurance of future performance or other grounds (including, but not limited to, payment of all unpaid postpetition invoices). Workday also reserves all rights under the MSA and Order Forms, as well as all rights with respect to administrative expense claims related to the MSA and Order Forms.

10. Workday also reserves the right to withdraw this limited response or revise the stated cure amounts pending further investigation.

For the reasons above, Workday responds: (1) requesting any assumption correctly identify the MSA and Order Forms as detailed above; (2) any assumption include a cure of prepetition and postpetition amounts outstanding under the MSA and Order Forms; and (3) reserving all rights under the MSA and Order Forms, including all rights with respect to administrative expense claims related to the MSA and Order Forms.

Dated: June 26, 2023

**PERKINS COIE LLP**

By: /s/ Tina N. Moss

Tina N. Moss, Bar No. 014441993

1155 Avenue of the Americas, 22nd Floor

New York, New York 10036-2711

Telephone: +1.212.262.6900

Facsimile: +1.212.977.1649

TMoss@perkinscoie.com

**CERTIFICATE OF SERVICE**

I, Tina N. Moss, hereby certify that on this 26th day of June 2023, I caused a true and correct copy of the forgoing to be electronically filed with the Court using the CM/ECF System and to be served upon all parties requesting service therefrom. I further certify that I caused a true and correct copy of the foregoing to be served upon the following via electronic mail:

Joshua A. Sussberg, P.C.  
Emily E. Geier, P.C.  
Derek I. Hunter, Esquire  
Ross J. Fiedler, Esquire  
**Kirkland & Ellis LLP**  
601 Lexington Avenue  
New York, New York 10022  
[Joshua.sussberg@kirkland.com](mailto:Joshua.sussberg@kirkland.com)  
[Emily.geier@kirkland.com](mailto:Emily.geier@kirkland.com)  
[Derek.hunter@kirkland.com](mailto:Derek.hunter@kirkland.com)  
*Counsel to the Debtors*

Michael D. Sirota, Esquire  
Warren A. Usatine, Esquire  
Felice R. Yudkin, Esquire  
**Cole Schotz P.C.**  
Court Plaza North  
25 Main Street  
Hackensack, New Jersey 07601  
[msirota@coleschotz.com](mailto:msirota@coleschotz.com)  
[wusatine@coleschotz.com](mailto:wusatine@coleschotz.com)  
[fyudkin@coleschotz.com](mailto:fyudkin@coleschotz.com)  
*Co-counsel to the Debtors*

David M. Hillman, Esquire  
Megan R. Volin, Esquire  
**Proskauer Rose LLP**  
Eleven Times Square  
New York, NY 10036  
[DHillman@proskauer.com](mailto:DHillman@proskauer.com)  
[MVolin@proskauer.com](mailto:MVolin@proskauer.com)

Marshall S. Huebner, Esquire  
Adam L. Shpeen, Esquire  
Steven Z. Szanzer, Esquire  
Michael Pera, Esquire  
**Davis Polk & Wardwell LLP**  
450 Lexington Avenue  
New York, New York 10017  
[marshall.huebner@davispolk.com](mailto:marshall.huebner@davispolk.com)  
[adam.shpeen@davispolk.com](mailto:adam.shpeen@davispolk.com)  
[steven.szanzer@davispolk.com](mailto:steven.szanzer@davispolk.com)  
[michael.pera@davispolk.com](mailto:michael.pera@davispolk.com)  
*Counsel to the Prepetition ABL Agent*

Fran B. Steele, Esquire  
**Office of the United States  
Trustee for Region 3**  
District of New Jersey  
Raymond Boulevard, Suite 2100  
Newark, NJ 07102  
[Fran.b.steele@usdoj.gov](mailto:Fran.b.steele@usdoj.gov)

Robert J. Feinstein, Esquire  
Bradford J. Sandler, Esquire  
Paul J. Labov, Esquire  
Colin R. Robinson, Esquire  
**Pachulski Stang Ziehl & Jones LLP**  
780 Third Ave., 34th Floor  
New York, NY 10017  
[rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)  
[bsandler@pszjlaw.com](mailto:bsandler@pszjlaw.com)  
[plabov@pszjlaw.com](mailto:plabov@pszjlaw.com)

*Counsel to the DIP Agent*

Scott K. Charles, Esquire  
Michael S. Benn, Esquire  
Gordon S. Moodie, Esquire  
**Wachtell Lipton Rosen & Katz**  
51 West 52nd Street  
New York, NY 10019  
[SKCharles@wlrk.com](mailto:SKCharles@wlrk.com)  
[MSBenn@wlrk.com](mailto:MSBenn@wlrk.com)  
[GSMoodie@wlrk.com](mailto:GSMoodie@wlrk.com)  
*Counsel to Stalking Horse Bidder*

[crobinson@pszjlaw.com](mailto:crobinson@pszjlaw.com)

*Counsel to Creditors' Committee*

Dated: June 26, 2023

*s/ Tina N. Moss*

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